

him. But apparently by some oversight it was not made a condition, as it usually is in such cases, that payment of the costs should be a condition precedent to the institution of the fresh suit. We think, however, that this was a case in which it was incumbent upon the Court to see that the costs were paid within a reasonable time, and not a case in which further time should be given merely because a fresh suit has been instituted. We, therefore, set aside the order of the lower Court staying the execution proceedings, and direct that these proceedings do proceed. The appellants will be entitled to their costs in this Court.

J. V. W.

Appeal allowed.

Before Mr. Justice Mitter and Mr. Justice Agnew.

BHOBANI MAHTO (PLAINTIFF) *v.* SHIBNATH PARA (DEFENDANT).*

Registration Act (XX of 1866), s. 17, cl. 4—Zur-i-peshgi lease—"Leases not exceeding one year," Meaning of.

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Leases which were exempted from the operation of s. 17, cl. 4, Act XX of 1866, were leases the term of which was one year certain.

Where a *zur-i-peshgi* lease was granted for one year, but with a stipulation that unless the loan were repaid within that time it should continue in force, *held*, that such a lease came within the words of s. 17, cl. 4, Act XX of 1866, "leases of immovable property for any term exceeding one year" of which registration was compulsory.

THIS was a suit for arrears of rent. The plaintiff based his claim upon an unregistered *zur-i-peshgi* lease which, though it purported to be for the term of one year, contained a stipulation that the lease should remain in force until the loan was repaid. Both the lower Courts agreed in holding that the document was one of which registration was necessary under s. 17, cl. 4, Act XX of 1866, and refused to admit it in evidence.

On appeal to the High Court it was contended that the lease did not require to be registered.

* Appeal from Appellate Decree No. 2021 of 1885, against the decree of Moulvie Mahomed Nurul Hossein, Subordinate Judge of Sarun, dated the 6th of August 1885, reversing the decree of Baboo Harihar Charan, Munsiff of Chuprah, dated the 1st of December 1884.

1886

Baboo *Rajendra Nath Bose* for the appellants.BHOBANI
MAHTOBaboo *Dwarka Nath Chuckerbutty* for the respondent.v.
SHIBNATH
PARA.

The judgment of the Court (MITTER and AGNEW, JJ.) was as follows:—

The question raised in this case is whether the *zur-i-peshgi* lease upon which the plaintiff relied is a lease which required registration. It was executed in September 1866. The Registration Act then in force was Act XX of 1866. Section 17 says: "Instruments next hereinafter mentioned will be registered." And the 4th clause is to this effect: "Leases of immovable property for any term exceeding one year." The question before us is, whether the lease in this case was for any term exceeding one year. The lease was a *zur-i-peshgi* lease granted on the advance of a loan, and it is stipulated therein that it was in the first place to remain in force for one year; but then it goes on to provide that if the loan is not repaid it will continue in force; and the question therefore for our consideration is, whether a lease of this description comes within the words "leases of immovable property for any term exceeding one year." We think it does. It appears to us that the leases which were intended to be excluded from this 4th clause were leases the term of which was one year certain. In this case the condition was that if the *zur-i-peshgi* money was not repaid the lease was to continue in force until the money was repaid, and therefore the term might exceed one year. The lease might, in fact, be in force for many years. So long as the money is not repaid it would not come to an end.

We think, therefore, that the Subordinate Judge was right in holding that the lease upon which the plaintiff relies required registration under Act XX of 1866.

We dismiss this appeal with costs.

K. M. C.

Appeal dismissed.